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The view of the scope of a statute embracing the provisions of Lord Campbell's Act will depend largely upon the path taken in approaching the problem. If we regard the object of the act punitive then the plausibility of including a non-resident alien is self evident in order to enforce greater efficiency in the protection of human life. This seems to have been the thought in Mr. Justice Holmes' mind in affirming the Massachusetts court<sup>18</sup> when he said, "It is primarily a penalty for the protection of the life of a workman in this state." By a parity of reasoning a Canadian was allowed recovery in Alabama<sup>19</sup> under an act to suppress murder and lynching. Other decisions under acts to augment the safety of mining operations give this right to a non-resident alien.<sup>20</sup>

If we consider the statute as granting a benefit to the relation of the deceased within certain defined degrees, the question of its extra territorial power arises. The Pennsylvania courts predicate their conclusion on the fact that a non-resident debtor is not entitled to the benefits of their exemption laws.<sup>21</sup>

The language of the various statutes is broad enough to cover the non-resident alien, but it is incumbent upon each court to decide the object of its own act. If we take a retrospective view of the whole matter, may we not say that these statutes grant no new right, but simply remove the bar which has crept into the law when the *weregild* ceased to be pursued by the individual, and it was then thoughtlessly said that the common law supports no action on death? If we answer this in the affirmative, only one logical position can be assumed, viz.: that of the majority as represented by *Hahoning Co. v. Blomfelt*.<sup>22</sup>

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#### THE RIGHT OF A THIRD PARTY CLAIMANT TO ENJOIN AN EXECUTION SALE.

In Pennsylvania it has long been the practice to allow a creditor to sell on execution against the lands of the debtor, any title alleged to be in him, leaving the purchaser of such title to try the validity of it afterwards in an action of ejectment. In the recent case of *Mantz v. Kistler et al.* (70 Atlantic Rep. 545,

<sup>18</sup> *Mulhall v. Fallon*, 54 L. R. A. 934 (1905).

<sup>19</sup> *Luke v. Calhoun*, 52 Ala. 115 (1875).

<sup>20</sup> *Kelleyville v. Petrytis*, 195 Ill. 215 (1902).

<sup>21</sup> *Collum's Appeal*, 2 Penny. 130 (1882).

<sup>22</sup> 163 Fed. 827 (1908).

decided in the Supreme Court of Pennsylvania, May 4, 1908), it was held that a defendant in execution cannot enjoin, by bill in equity, a sheriff's sale of his property, on the ground that he is not the defendant against whom judgment had been obtained, but that another person of similar name is the defendant. By this decision, the proposition is affirmed that a court of equity has no jurisdiction in such a case, and the present practice sustained, although criticized by Mr. Chief Justice Mitchell, who delivered the opinion of the Court. "It is not," says the Chief Justice, "the best system, being a makeshift, in the absence of a court of chancery, for the administration of equitable principles under the forms furnished by the common law. The remedy in equity as administered in some jurisdictions, notably our neighboring state of New Jersey, is very much superior. There the rights of parties are fought out and adjusted in advance of a sale, so that every claimant or outside purchaser may bid at the sale with exact knowledge of what title will pass, and what disposition will be made of the proceeds; but the other practice has been long established here, and is only departed from in very clear cases."

In view of the adverse criticism of the Chief Justice of the State, it is interesting to note how the practice apparently grew up, and to consider the status of equity jurisdiction in Pennsylvania. In this State, lands, with certain modifications, are chattels for the payment of debts.<sup>1</sup> Under the Act of 1705<sup>2</sup> the lands of debtors were made liable to execution, the words of the act embracing all possible titles. By a later act,<sup>3</sup> the right to levy on and sell the debtor's real estate was affirmed, and a system of procedure established by means of which this might be done. And it has always been settled in Pennsylvania that a purchaser at sheriff's sale takes such title as the debtor had at the time of judgment.<sup>4</sup>

The courts in Pennsylvania had practically no equity jurisdiction until 1836. Certain specific equity powers were conferred on the Courts of Common Pleas by an Act of Assembly passed in that year.<sup>5</sup> Under this Act, the courts of Philadelphia County were given greater powers than those of the other counties, although by a later act,<sup>6</sup> the courts in the other counties were clothed with the same equity jurisdiction as possessed by those in Philadelphia. It was provided that the

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<sup>1</sup> *Cowden v. Brady*, 8 S. & R. 508.

<sup>2</sup> 1 Smith's Laws, 57.

<sup>3</sup> Act of June 16, 1836, P. L. 755, sec. 43.

<sup>4</sup> *Fehley v. Barr*, 66 Pa. 196.

<sup>5</sup> Act of June 16, 1836, P. L. 784, sec. 13.

practice in equity conform to that of the Supreme Court of the United States.<sup>7</sup> None of the acts expressly conferred jurisdiction on the courts in cases of *quia timet* or to remove cloud on title to real estate, but the courts assumed that they were empowered to act in such cases under a clause giving jurisdiction in cases of fraud, regarding "a pretended and colorable claim as a fraud upon the real owner."<sup>8</sup> And it would be but a logical step to extend the jurisdiction to preventing the raising of a cloud on title. There is no doubt but that the sale in *Mantz v. Kistler* (*supra*), if consummated, would be a cloud on the title of the owner of the land. And it is well settled that the jurisdiction of equity lies to prevent the raising of a cloud on title as well as to remove one already in existence.<sup>9</sup>

The courts have, however, clung to the old practice, departing from it only so far as to grant a bill in equity to enjoin the levy and sale of a wife's real estate by a creditor of her husband's, on an execution against him, where the wife's right to the land is clearly established.<sup>10</sup> Where there is a dispute as to the wife's title, equity will not restrain the execution and sale thereunder.<sup>11</sup> It would seem, however, that even if the present practice were to be considered as justifiable before the courts had equity jurisdiction, after this was conferred so as to extend to a case like *Mantz v. Kistler*, the courts should have administered equitable principles under equitable forms, and the old practice should have been abrogated as no longer necessary. Had this been done, the question of title to lands seized in execution would be determined before the sale under execution, and, not only would the real owner of the land seized for another's debt be relieved from hardship, but in cases where there was no dispute as to title involved, bidders would know just what was to be sold, and would bid understandingly, so that, whereas, now, a property is sold at a sheriff's sale at a great sacrifice, the amount realized from the sale would then more nearly approach the real value of the realty, thus benefiting both debtor and creditor. It may well be that the courts at this day do not feel at liberty to remedy the defect, and it is therefore submitted that the practice now in vogue should be changed by legislative enactment and the practice prevailing in

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<sup>6</sup> Act of February 14, 1854, P. L. 39, sec. 1.

<sup>7</sup> Act of June 16, 1836, P. L. 784, sec. 13.

<sup>8</sup> Thompson's Appeal, 107 Pa. 559.

<sup>9</sup> Pomeroy's Equity Jurisprudence, vol. 4 (3d Ed.), sec. 1398, note 1, and cases there cited.

<sup>10</sup> Hunter's Appeal, 40 Pa. 195.

<sup>11</sup> Winch's Appeal, 61 Pa. 424.

equity substituted. But even if the courts do not care to go the whole length of restraining the sale when the land is claimed by one other than the debtor, and the title is in dispute, there is no reason why the rule enjoining the sale of a wife's lands, seized on an execution against her husband, but to which she has fully established her title, should not be extended to cases where a stranger to the defendant in the execution fully establishes his rights in the land levied on, and seeks to prevent his land from being sold to satisfy a debt not his own.

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### CAN A CORPORATION EXIST WITHOUT STOCKHOLDERS?

In general there may be said to be two theories concerning the nature of a corporation. (1) That it is a legal entity distinct from the members who compose it, or (2) that it is a collection or association of natural persons formed for certain legal purposes.

Under the second theory the very definition makes stockholders necessary for corporate existence.

Under the first theory when the legal or artificial person is spoken of, it is simply because the corporation is looked at from one point of view, that is viewing one result of incorporation. To argue that as a result of incorporation there is an entity formed, and then to say that the entity can exist without the component parts of which it is made up would be clearly a fallacy.

A corporation is but an association and it would be a contradiction in terms to speak of an association existing without associates composing it.<sup>1</sup>

In the recent case of *In re Western Branch v. Trust Company*,<sup>2</sup> the stockholders of the Western Bank unanimously agreed to increase their capital stock from \$200,000 to \$500,000. On the same day the board of directors took the necessary steps looking to the subscription for an issuance of this stock. All the original shares of stock were retired and there were issued in their stead new shares. There intervened a short period of time between the retirement of the old issue and the issuing of the new.

It was contended by creditors who sought to have the Bank declared a partnership and the members bankrupt, that during this interval there were no stockholders and consequently the corporation came to an end.

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<sup>1</sup> I Morawetz, Private Corporations, 33.